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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,428	09/26/2003	Stanley L. Fry	023470	8422

1726 7590 03/28/2006

INTERNATIONAL PAPER COMPANY
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LOVELAND, OH 45140

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,428

Applicant(s)

FRY, STANLEY L.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 19-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20031222</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, fig. 2 in the reply filed on 03 January 2006 is acknowledged. The traversal is on the ground(s) that (1) the requirement must show that the inventions are distinct and unrelated, such as by separate classification, separate status in the art or different field of search and the species disclosed all have the same field of search, same status in the art and same classification and (2) the claimed inventions are related, but distinct and there must be a serious burden on the Examiner if restriction is not required. This is not found persuasive because the species as disclosed are independent inventions insofar as they are not disclosed as being related to one another, i.e. they are not disclosed as being connected in design, operation or effect. It is noted that the mere fact that some identical or similar elements exist within two differently constructed species does not make them dependent inventions. Also, the examination and search of all the species as opposed to the elected species would require significant additional time with respect to the handling and search of all the differing features being disclosed within the various embodiments being claimed. The non-elected embodiments would also require searching within subclasses not required by the fig. 2 embodiment.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-9 and 19-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. It is noted that the listing of claims within the response did not include claim 10 which is reading upon the elected embodiment. Claim 10 will be examined along with claims 11-18, 39 and 40.

Claim Rejections - 35 USC § 112

3. Claims 10-18, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, “an side panel” is grammatically unclear.

The following are each a double inclusion of an element, i.e. the element is being reintroduced into the claims: claim 1, lines 10, 11 and 13, “side flaps”, “an adjacent end wall” and “a first at least one side wall”, claim 15, “an adjacent side wall”, claim 16, “an adjacent locking flap”, claim 17, “an adjacent first lock slot”, claim 18, “at least one side flap”, claim 39, lines 14, 15, 18 and 19, “at least one second wall outer edge”, “adjacent side flaps” and “an adjacent first wall” and claim 40, lines 4, 5, 10 and 11, “a flap side edge”, “at least one stacking tab” and “an adjacent locking flap”.

The following each lack antecedent basis in the claims: claim 10, line 15, “the at least one side wall” (only a “first” at least one side wall previously defined), claim 11, “the at least stacking one slot”, claim 12, “the at least one side wall” and claim 13, “the at least one side wall”.

The following are each unclear insofar as a plurality of the recited element were previously defined in the claims and one cannot determine which of the plurality is being referred to: claim 15, “the side flap”, claim 17, “the locking flap” and “the first corner flap”, claim 18, “the end wall” and claim 39, line 19, “the locking flap”.

In claim 39, lines 4 and 5 are unclear with respect to how a plurality of first walls are foldably connected to a plurality of base edges along a single common fold line, i.e. it would appear that a plurality of fold lines would be required.

In claim 39, lines 7 and 8 are unclear for the same reason.

In claim 39, lines 10 and 11 are unclear, as disclosed, with respect to how a plurality of locking flaps are connected to each first wall outer edge. It would appear that each first wall only includes a single locking flap.

In claim 39, line 12 is unclear, as disclosed, with respect to how a plurality of side flaps are connected to each second wall side edge.

In claim 39, lines 16-18 are unclear, as disclosed, with respect to how a plurality of first walls fold along a single common first fold line and how a plurality of second walls fold along a single common second fold line.

In claim 40, line 6 is unclear with respect to how a plurality of corner flaps are foldably connected to each corner flap along a single fold line.

In claim 40, lines 9 and 10, it is unclear how each corner flap folds along the same corner fold line.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 10-12, 14-16, 39 and 40 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by McLeod (fig. 4 emb).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLeod (fig. 4 emb) in view of Eichenauer. McLeod discloses all structure of the claimed container except a bottom tab on a bottom edge of one of the side flaps and a corresponding bottom panel slot to receive the tab. Eichenauer teaches that it is known to make the bottom edge of a side flap with a tab (64) and a corresponding bottom panel slot (66) in a tray. It would have been obvious to make the container of McLeod with a tab and slot interlock as taught by Eichenauer to align the and prevent movement of the side flap during manufacture and use of the tray.

Allowable Subject Matter

8. Claims 13 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

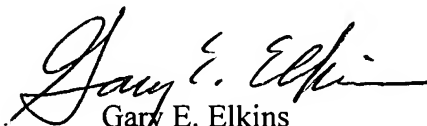
The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727